

NEWINGTON TOWN PLAN AND ZONING COMMISSION

Public Hearing and Regular Meeting

February 12, 2014

Chairman Cathleen Hall called the regular meeting of the Newington Town Plan and Zoning Commission to order at 7:00 p.m. in Conference Room L101 in Newington Town Hall, 131 Cedar Street, Newington, Connecticut.

I. ROLL CALL AND SEATING OF ALTERNATES

Commissioners Present

Commissioner Frank Aieta
Commissioner Carol Anest
Commissioner Michael Camillo
Chairman Cathleen Hall
Commissioner Kenneth Leggo
Commissioner Robert Serra Sr.
Commissioner Stanley Sobieski

Commissioners Absent

Staff Present

Craig Minor, Town Planner

II. APPROVAL OF AGENDA

No changes

III. PUBLIC HEARINGS

A. Petition 47-13: Zoning Text Amendment (New Section 6.15 Medical Marijuana); Town Plan and Zoning Commission, applicant. Continued from January 22, 2014.

Craig Minor: Madam Chairman, the public hearing was continued from the last meeting for a couple of reasons, the Commission wanted to see some more maps showing the, how the setbacks would work, and there were also a couple of questions about the regulations themselves. I have prepared two maps and I'll display them on the monitor, but let me first go to the questions on the regulations themselves, and I'll just read my memo to be succinct. At the last TPZ meeting, Commissioner Anest asked if a production facility had to be enclosed. The answer is yes, according to the regulations of the Connecticut State agencies, quote, production facility, end quote, is defined as a secure indoor facility. Then Commissioner Serra asked if parking lots need to be secured. No, according to the regulations, but production and dispensing facilities must have, " video cameras in all areas that may contain marijuana and all points of entry and exit which shall be appropriate for the normal lighting conditions under surveillance." The regulations also state that the Department of Consumer Protection must consider whether the proximity of a proposed facility "will have a detrimental effect upon any place used primarily for religious worship, public and private school, convent, charitable institutions, whether supported by private or public funds, hospital or Veterans home, or any camp or military establishment." I put that in there just so the Commission knows that whatever you adopt for Newington, the State is still

going to consider how close a proposed facility is to schools, churches and playgrounds. There is no absolute distance so the Commissioner could approve a permit that was some distance from a church, school or playground, but the Department of Consumer Protection must consider the proximity, whatever that means. Now the other thing that the Commission asked for were some maps showing the setbacks for the production as opposed to setbacks for dispensary because the Commission felt that a different setback was appropriate. So for production, what this map shows, this is the production map, gray areas are the Industrial Zones and it's a given that the regulations say that dispensing and production can only take place in Industrial zones, and what the blue line or the teal line shows is the one hundred foot setback that the Commission has been thinking about invoking, the one hundred foot setback from residential zones, churches, schools, playgrounds, so as you can see, that allows a fairly, well, some amount of land in town where a production facility could theoretically be located. The Commission is also looking at a regulation that requires it be located in a building of at least 25,000 square feet and so what these red boxes are, are existing buildings that are at least 25,000 square feet that are at least one hundred feet in from a residential zone or a church or school or playground, so theoretically, if the regulation is adopted, someone could apply for a permit to operate a production facility anywhere within these teal enclosed areas.

Now let me flip to the production map, distribution map. What the Commission is looking at is again, Industrial Zones only for dispensaries, but with 1,000 foot setback from residential neighborhoods, churches, schools and playgrounds, so that severely limits the amount of land in Newington where someone could theoretically get a permit for a dispensary. In fact, it comes down to only this area on Fenn Road, in all of Newington where the land meets the requirement of being at least 1000 feet from a residential zone or church, school, or playground. Now the Commission is not looking at having a minimum size of 25,000 square feet, so these red boxes are all of the existing buildings of any size in this area. There is really nothing south of Cedar on that side of town anyway. As the audience hopefully can see it from back there, there is land where someone could theoretically build a building for dispensary, but it is highly unlikely that they would on that parcel of land. So those are the maps that the Commission asked to have prepared, and I'll turn it back over to the Chairman.

Chairman Hall: Does anyone on the Commission have a question before we go to the public? Everybody able to decipher these maps? These are much better than we had before, color wise.....

Craig Minor: Not trying to put both on one map.

Chairman Hall: Yes, appreciate that. All right, as this is a public hearing, is there anyone from the public who wishes to speak in favor of this petition? Is there anyone in the audience that would like to speak against this petition? Is there anyone who simply wants to speak to the petition? Seeing none, I believe we have been asked to leave this open?

Craig Minor: Yes, the Town Attorney just got the regulation last week, and he asked that the Commission leave it open for him to review and comment on at the next meeting.

Commissioner Aieta: Just a procedural question for the Town Planner. How long have we been looking at this. Do we have a time restriction even though it's an application that we brought up ourselves, we still have to live by the time frames and so forth.....

Craig Minor: No, that doesn't apply to the Commission. You don't have a deadline.

Commissioner Aieta: We could keep it open forever?

Craig Minor: If you wanted to, but why would you want to? Now production permits have been issued by the Commissioner, they issued four. Simsbury, Portland, down along the shoreline, and I'm sorry, I don't remember what the fourth one is, but he has not issued any....

Commissioner Anest: Middletown?

Craig Minor: No, we thought it was going to be Middletown, because the Middletown Town Council gave zoning approval, but that individual didn't get a license. Same with New Britain. The City of New Britain issued a license, or a permit to someone, but that individual was not successful in the license lottery, but as far as dispensary, the Commissioner is going to wait I've been told, a couple of months before issuing any dispensary permits.

Chairman Hall: Any questions?

Commissioner Sobieski: Craig, how many permits total for growth are there going to be? Ten?

Craig Minor: The law says between two and eight, but he has issued four, and that is all he is going to be issuing for now. I'll doublecheck, but I believe it is between two and eight.

Chairman Hall: Any other questions before we move on?
The consensus is to leave this open.

**B. Petition 62-13: Zoning Text Amendment (Section 3.11.7: Fueling Station)
Hayes-Kaufman Newington Associates LLC applicant, Attorney Mark S.
Shipman, 20 Batterson Park Road., Farmington CT, contact. Continued
from January 22, 2014**

Attorney Shipman: Good evening, my name is Mark Shipman, and I am representing the applicant. We made the presentation at the last meeting and we don't need to do it again, I'm sure your memories are probably better than mine. I do want to say that I reviewed the staff report and agree that those are very appropriate changes that the staff has proposed. Mr. Minor's changes are acceptable to the applicant. I think that the combination of those changes and the amendment that we offered actually broaden the opportunities for more properties in the community to take advantage of the regulations, and if there was a concern that this might have been site specific, or spot zoning, then I think those changes dispel that, opening it up to the Berlin Turnpike Business Zone, PD Zones and allowing contiguous parcels to be used. We know of one piece, I pointed out at the public hearing other parcels, but the piece that we would take the opportunity to use really appears to be part of the shopping center. There is an internal road that this piece sits on one side of, and shares with the shopping center, and all access would be internal. I think if the other locations that I indicated to the Commission had similar properties, I think you could see the same thing with a Target or, I think I cited two or three other possibilities. I did note that there were some concerns about its proximity and the fact that it was another gas station, from the discussions in the minutes. I just want to point out, A. that when we proposed this and that when you passed the original ordinance there was a moratorium, and this was a way for it not to be a gas station, and it isn't a gas station. It's a fueling station, and it has many many more restrictions than can be or have been put on gas stations. The most significant of which is that it is not on a public street, directly on a main street. It doesn't have repairs, it doesn't have a storage of vehicles on the premises, it doesn't have, it's not doing oil changes and having hazardous materials, it's basically a little larger than a kiosk. As I pointed out at the last meeting because we do want to have a bathroom in there for the attendant so he doesn't

have to get out and walk across the parking lot to the Stop and Shop but it's not going to be a convenience store, it's not going to have other sales, so it really is different from other things that you have in town. The ordinance does exist, this I think as I said, broadens it and makes it more applicable to more places. Available for questions, as is Mr. Hayes.

Chairman Hall: Anyone have any questions at this time?

Commissioner Serra: The one question I have Attorney Shipman is that when you were here the last time, you said that you were going to have, or they wanted to have a display of motor oil, things of that nature.

Attorney Shipman: Just a display which would come in at night, go out during the day, but no, in other words, no service on the premises. Not have any utilization of it on the premises.

Commissioner Serra: I guess my question would be, if a motorist comes in and they need oil, they're going to get the can, they are going to open it up, they're going to put it in their car. How is that going to be stopped?

Attorney Shipman: It's not going to be able to be done on the premises, and if that happens the attendant will tell him to leave, the premises is not available for that service. And there really won't be a space for it. There really is not going to be a parking lot. The pump aisles and a small kiosk and there isn't going to be much room other than to park the car of the attendant that's in the facility, no other cars, so that there really isn't going to be a place for a person to do that. And hopefully, if you approve this one, we will come in with a site plan, you'll see that.

Commissioner Serra: Thank you.

Chairman Hall: Any other questions at this time? Since this is a public hearing, anyone from the public wishing to speak in favor of this petition. Is there anyone wishing to speak against it? Is there anyone wishing just to speak to the petition? Seeing none.....

Attorney Shipman: The only thing I would, before you close the public hearing, and I want you to close the public hearing, I know it's not your custom to act at the meeting, and I don't even know if staff has presented you with an ordinance, but we are anxious to go, so if you act favorably, we'd love you to do it as soon as possible.

Chairman Hall: Thank you Attorney Shipman. Any other comments at this time? What is the pleasure of the Commission?

Commissioner Anest: Close it and move it to Old Business for the next meeting.

Chairman Hall: For the 26th?

Commissioner Sobieski seconded the motion.

The vote was unanimously in favor of closing Petition 62-13 and moving it to the next meeting.

Chairman Hall: The next petition I will recuse myself, I'm related to one of the officers of the Kiwanis Club, so Carol will take over.

C. Petition 05-14: Special Exception (Section 3.2.8: Charitable and Civic Events) at Newington Municipal Parking Lot. Newington Kiwanis Club, applicant.

Vice-Chairman Anest: Can the petitioner or his designee come forward and state your name and address for the record?

Al Cohen: Good evening and thank you all very much for giving us the time to make our presentation. My name is Al Cohen, Alexander, if you will. I've lived in Newington since 1956 and we're here to ask your permission to renew our privilege.....

Vice-Chairman Anest: Mr. Cohen, can you state your address for the record please?

Al Cohen: My address is 42 Jeffrey Lane.

Vice-Chairman Anest: Thank you. Please continue.

Al Cohen: I'm a member of the Kiwanis Club of Newington. We're part of a national organization. We have hundreds of clubs and in Newington, here in particular, I will read from our membership brochure which will tell you a little bit about us in a very few words. "We are your neighbors", this is not quite up to date, but I'll pass it around later if you would like. "We have banded together to try to make the world a better place in which to live with special devotion to the Town of Newington." Our purpose in establishing the flea market many years ago was to raise funds to do exactly what we talked about. Hopefully to make Newington a little better place and to help some of the organizations that don't have funding or have insufficient funding. The flea market was started in 1991 by former mayor Joe Doyle, Frank Zuraski, who was a former town constable, and a couple of other gentlemen, Vincent Belantano and his brother and Dick Bussell, who was not a member of our organization but was the manager of the Hartford Drive In, having heard and knew what we were going to do, offered the use of his place at no charge which was an absolutely wonderful thing. We paid his operating expenses which were minimal. We had our name up on the marquee on the Berlin Turnpike and it always, it was just fabulous. People used to stop, who were just going by, to visit our flea market and we raised a lot of bucks, and that was heaven, and that came to an end, and the Town very kindly allowed us to use the Constitution Square parking lot, and that has worked out very well for us. No where near as well as we did at the other, but it was excellent. Some of our current members, just to give you a few names, Sandy Nafis is one of our members, Greg Stellmack is our treasurer, he is a former Newington town treasurer, going back many years. He looks like a young fellow, but he goes back quite a few years. Myra Cohen from the Town Council is a member, and we just have a desire to serve the town. We have managed to raise, over the years, close to half a million dollars and given it all away, and some of our recipients are scholarships at the Newington High School, the Key Club, Newington Alternative Education Program, Southfield Children's Center, we've given them \$18,000 over the past ten years and at one time saved them from some kind of a bankruptcy situation. We've given Newington students assistance funds into the thousands. For every year for the past twenty-two years, we even have given to the Salvation Army totaling some pretty big bucks, Newington Girl's State and Boy's State from the American Legion, Boy Scout Troops. We have given the Newington Memorial Day Parade over \$30,000 since we started, Newington Human Services Food Bank over \$20,000 since 2004 and the Connecticut Children's Medical Center Cranial and Facial Department, \$2500 since 2006. We bring people into Newington, in some cases perhaps people who never heard of the town. We are very fortunately in getting some good PR. Brad Davis of WDRC cuts the ribbon each year and talks about us, for a week before and probably a little bit after, and that helps to bring people in. Mike Stacey at WRCH says nice things about us, and we get some

pretty good PR in the New Britain Herald and the Town Crier has been very good to us. We get into a lot of good papers around the state and we bring people in from all over the state, some even from Rhode Island and some from nearby Massachusetts and so forth. Some people come just for the sightseeing, and then people will hopefully get the idea that Newington is a public spirited town. I think you have the copy of the letter that was sent, and gives the schedule of what we are looking for, and I can.....

Craig Minor: Mr. Cohen, excuse me, I just noticed that our agenda package does not have the second page of his letter. I guess none of you noticed either, so if you want to take a break Mr. Cohen, I'll read the second page, of your letter. The first page, last paragraph, *Kiwanis Club members who have a desire to serve the town are volunteer workers at the market, arriving as early as 6:00 a.m. to put up signs, direct the east and west entrance tents, put up plastic snow fencing to enclose the main market, staff the entrances to collect donations, and vendor fees, maintain order throughout the day and disassemble the market at 2:00.* Weather permitting, the market runs for ten Sundays in the spring, April 27, 2014 to June 29, 2014, and ten days, only nine in 2014, August 31, 2014 to October 26, 2014. Usually a food vendor or two provides light fare throughout the day. The club provides portapotties and trash barrels in addition to the permanent barrels on the square. Temporary signage is placed on Constance Leigh Drive and Cedar Street. A seasonal sign and a market day "open flag" appear on the Eddy property on Cedar Street. The market averages sixty vendors on Sunday, each occupying two marked parking spaces. They provide their own set-up equipment. We offer no amusements or entertainment. The Kiwanis Club of Newington has been a benevolent fixture in town since 1950 and through its efforts the townspeople and its various organizations have received over \$350,000.00. It has operated the Big K flea market since 1991, first at the E.M. Lowe's Drive-In and then in 2005 at Constitution Square through the generous permission of the town planning Commission. We have been good tenants through a clean, quiet and orderly operation of the market. We ask you to extend your permission for another three year period to carry on this successful effort.

Vice-Chairman Anest: Mr. Cohen, is there anything else you would like to add?

Al Cohen: Not that I can think of, thank you.

Vice-Chairman Anest: Craig, do you have staff comments?

Craig Minor: Only that because this activity does also require an event application approval from town staff, the fire marshal, the building inspector, the town manager, the zoning enforcement officer, they will all look at it very carefully to make sure that everything is appropriate.

Vice-Chairman Anest: Since this is a public hearing, is there anyone from the public who would like to speak in favor of this application? In opposition to this application? Just to speak? Do the Commissioners have any comments?

Craig Minor: One housekeeping thing. Through an oversight, the public hearing notice sign did not get put up until last week, short of the ten days that is required to be up, so I would suggest that you keep the hearing open until your next meeting to give someone a chance to come and speak if they want to, and then close the hearing that night, and presumably act on it that night, which is pretty much your same process anyway. You would have closed the hearing tonight, and then approved it next week, so it is not going to result in a delay, and even if it did, their first event is April 27th, so there is plenty of time, so I would suggest that you keep the hearing open for that reason.

Vice-Chairman Anest: We are going to keep this open until the 26th of February and then we will act on it that evening. Thank you very much.

Al Cohen: Thank you.

Chairman Hall: Thank you Carol.

IV. **PUBLIC PARTICIPATION** (for items not listed on the Agenda; speakers limited to two minutes.

Bob Smith, 101 Fox Run Court, Newington: This is my first actual meeting that I have attended but I've been following the activities of the board for over a year through the Internet. Thank you for giving me the opportunity.

My pet concern, pet area is signs. I know that a committee was formed to look into what has become an epidemic now on the Berlin Turnpike with signs affixed to trucks and vehicles that really aren't moving, they're just sitting out there. The problem seems to have gotten worse. Every Sunday on the way to or from church I swear I see another one out there. I'm just concerned, I'd like to see whatever needs to be done, whether it's a blue ribbon committee or whatever to get this going. I think the last thing I saw in the minutes was there was not a quorum maybe, so nothing happened. That's my only comment. I would just like to see more done. I had a number of communications with Craig, and if it was up to me, everybody that violates the sign ordinance would get fined heavily, but Craig is a, he's a calmer person than me and he's talked me down from that, but I would like to see something done about all of these signs on trucks and vehicles. It's just gotten ridiculous. Thank you.

Chairman Hall: Thank you Mr. Smith. Anyone else from the public?

V. **REMARKS BY COMMISSIONERS**

Commissioner Aieta: On this application that come in on the fueling stations, I hope we.....

Craig Minor: Excuse me, procedurally you really shouldn't be talking about that application.....

Commissioner Aieta: I'm not talking about the application, I'm talked about procedurally things that apply. I don't want to see the next time that we come in here an approval or deny, I want an opportunity to discuss this in light of the court case that was on the auto regulations. I think that this type of an item falls under that, and if we are not going to look at that as a whole, I don't see how you could look at this application as a stand alone without looking at the court case and the auto regulations. I have a problem with every time someone comes in with a specific instance where they want to use their particular piece of property that we go and start changing our regulations to fit that specific piece of property. We have done it over the last three or four years, we have done that and I think that's a bad procedure to follow, and I hope that we don't continue to do that. We can't be zoning per each individual piece of property in the Town of Newington. The zones are set, the regulations are set, we should be following them, not changing the regulations to make something fit, I want to be pro-active like everybody else here about getting businesses to come into town, but not at the detriment of the way that the Town looks and the work that we have done over the years to improve the Berlin Turnpike and some of the other areas, also, the protection of the neighborhoods and our residents. Under that particular item, I don't, I would hate to see that we come here next week and there is motions to approve or deny. I want the opportunity to discuss it in light of the overall auto regulations.

Commissioner Sobieski: I just have one quick question, wouldn't it be easier to give them a blanket permit for two years or three years instead of having them come in every year?

Chairman Hall: They asked for three years.

Commissioner Sobieski: Okay, I'm sorry.

Chairman Hall: We kind of decided that the last time because they were coming.....

Commissioner Aieta: Nothing every changes there as far as their layout, or their operation so maybe we could extend it this year and make it more than three years.

Craig Minor: Right. That was in the second page of the letter, that's why you didn't see, I'll make sure that you all get that.

Commissioner Sobieski: That was my thought, it's been here for ever almost, and they do a lot of good for the town, so I'm just saying, instead of making them come every few years, maybe we should extend it, and give them not three, but five. It's only a thought.

VI. MINUTES:

January 22, 2014

Commissioner Sobieski moved to accept the minutes of the January 22, 2014 meeting. The motion was seconded by Commissioner Leggo. The vote was unanimously in favor of the motion, with six voting YES.

VII. NEW BUSINESS

A. Petition 04-14: Review and Comment on Proposed LID Amendments to the Inland Wetlands and Watercourses Regulations, Conservation Commission, applicant.

Craig Minor: In the agenda I have a summary of this regulation, and it seems pretty benign. It adds "low impact development techniques" language throughout the Wetlands regulations. The only reason it is before you is that Newington has an ordinance that says anytime the Wetlands Agency wants to change their regs they have to run them by you first for your review and comments. I did prepare a Draft Suggested Motion this afternoon and it is on the table if the Commission chooses to move it to Old Business there is a Draft Suggested Motion for your use.

Chairman Hall: Does anyone see any issues with this?
It's almost definition more than anything. Any comments? What is the pleasure of the Commission? Do you want to act on this, or do you want to just wait.....

Commissioner Anest: I have a question? Do we have to act on it? Is there any specific time frame that we have to act on it before the public hearing. They want to hold their public hearing soon.

Craig Minor: Well, the law is really one sentence,
Not less than thirty-five days prior to the public hearing a copy of the regulation or

amendment thereto shall be referred to the Town Council, the Planning and Zoning Commission and the State Department of Environmental Protection for review and comment.

Chairman Hall: So review and comment doesn't mean vote.

Craig Minor: So I kind of took it on myself, actually I based the draft suggested motion for what you do with an 8-24. I kind of used that as guidance.

Chairman Hall: Does everyone feel comfortable voting on this and stating that we have no objection to it. I think that is essentially what our vote would be. Is that we see no objection to what they are going to do.

Commissioner Aieta: Let's look at the motion that he prepared.

Craig Minor: I'll read it to you. I move to make a favorable recommendation to the Newington Conservation Commission on the proposed "low impact development" amendments to the Inland Wetlands Regulations. And then with the findings that these amendments are consistent with the amendments that have been proposed for the Zoning Regs and Subdivision regs.

Chairman Hall: Everyone feel comfortable with that. We might as well do it and get that off our table.

Commissioner Sobieski moved that Petition 04-14 be moved to Old Business. The motion was seconded by Commissioner Aieta. The vote was unanimously in favor of the motion, with six voting YES.

VIII. OLD BUSINESS

Petition 04-14

Review and Comment on Proposed IW Regulation Amendments Newington Conservation Commission, owner/applicant

Commissioner Leggo moved to make a favorable recommendation to the Newington Conservation Commission on the proposed "Low Impact Development" amendments to the Inland Wetland Regulations."

FINDINGS:

1. These amendments are consistent with the amendments that have been proposed for the Zoning Regulations and the Subdivision Regulations.

CONDITIONS:

None

The motion was seconded by Commissioner Sobieski. The vote was unanimously in favor of the motion, with six voting YES.

IX. PETITIONS FOR PUBLIC HEARING SCHEDULING

None

X. TOWN PLANNER REPORTS:

A. Town Planner Report for February 12, 2014

Craig Minor: My report is in your package. Nothing much to report. As far as the Modern Tire appeal is concerned I'll read it. As I reported at the last meeting, Superior Court Judge William Motosese has ruled that "certain sections of the regulations are invalid" but he went on to say that "the remainder of the regulations can operate effectively without the invalid conditions." The Town Attorney told me that he will have something for TPZ to review at the next meeting.

Commissioner Aieta: That's tonight, do we have anything?

Craig Minor: No, the next meeting.

Under performance bonds, I do have an updated report for you. Not much action since last month, and I don't expect much action for a while since almost all of those old bonds are due to site issues, either parking, blacktop that didn't get put down, shrubbery that didn't get planted, which obviously is not going to happen at this time of year, so other than trying to line some things up for the spring, I don't expect much movement on those bond items for the next couple of months. That's all I have.

Do you want to talk about the sign regs while I have most of you here. Do you want to pick a date that would be good for the sign regulations committee to have its next meeting? Do you want to do the next Wednesday of your regular meeting?

Commissioner Anest: Yes, at about 3:30, or.....

Craig Minor: So it will be the 26th at 3:30.

Commissioner Anest: Can we make it 3:45.

Craig Minor: Sure, 3:45. Thank you.

XI. COMMUNICATIONS

None

XII. PUBLIC PARTICIPATION (for items not listed on the Agenda, speakers limited to two minutes.)

None

XIII. REMARKS BY COMMISSIONERS

Commissioner Aieta: The report that the Town Planner gave us on the court case, he said that there are certain, the judge ruled that certain sections of the regulations are invalid. Could we get the regulation and hi-light what things are not valid?

Craig Minor: Yes. I can also tell you, because it's pretty succinct. What he said was invalid were the areas where the Commission gives itself the authority to waive certain requirements by a two-thirds vote, like landscaping and certain things, he ruled those were invalid. The section where it says something to the effect of "and any other use as determined by the Commission," he rules that that was invalid. So those are the two issues that he looked at.

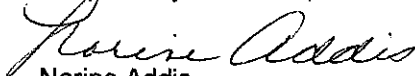
XIV. CLOSING REMARKS BY THE CHAIRMAN

Chairman Hall: We're having another "event" tomorrow and if anybody has any way of stopping this, I would appreciate it. I think the snow lovers have had enough, let the rest of us have the winter in peace. Enough is enough, be safe, and we will see you in two weeks.

XV. ADJOURNMENT

Commissioner Leggo moved to adjourn the meeting. The motion was seconded by Commissioner Sobieski. The meeting was adjourned at 7:40 p.m.

Respectfully submitted,



Norine Addis,
Recording Secretary